

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109 LPA-266-2024(O&M)
Dalip Singh & anotherAppellant(s)
Versus
State of Haryana & othersRespondent(s)

(2) LPA-267-2024(O&M)
Dalip Singh & anotherAppellant(s)
Versus
State of Haryana & othersRespondent(s)

Decided on : 20.03.2024

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr.P.R.Yadav, Advocate for the appellant (s).

Mr.Deepak Balyan, Addl.A.G., Haryana.

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-609-LPA-2024 in LPA-266-2024 &
CM-610-LPA-2024 in LPA-267-2024

1. Applications for condoning the delay of 56 & 120 days in filing the present appeals is allowed in view of the averments made in the applications duly supported by affidavit of appellant No.1. Delay of 56 and 120 days in filing the appeals is hereby condoned.
2. CMs stand disposed of.
LPA-266 & 267-2024
3. Consideration in the present appeals is to the judgment dated 07.08.2023 passed by the Learned Single Judge in CWP-2478-1996 and CWP-10705-2006 wherein the Learned Single Judge has repelled the challenge to promotion of the private-respondents as Assistant Registrars as well as to the post of Deputy Registrar.
4. The reasoning which weighed with the Learned Single Judge was that the private-respondents were absorbed as Statistical Assistants

which was separate cadre and there was no challenge to the same by the appellants as they were working as Inspectors with the Cooperative Department, Haryana which were governed by the Punjab State Co-operative Subordinate Services Rules, 1936. Challenge was thus made for the first time in the year 1996 and it was noticed that the absorption was done in the year 1980 and thus, keeping in view the fact that it is a feeder cadre post to the post of Assistant Registrar and there was no joint inter se seniority of the Statistical Assistants and that of Inspectors, the claim that the writ petitioners were senior to the private-respondents was repelled.

5. It was noticed that there was no representation or contest to the absorption of the private-respondents to the post of Statistical Assistants and it was done 15 years prior to the filing of the writ petitions and they could not raise any grievance. It is to be kept in mind that as per the pleadings, it is the claim of the writ petitioners that they joined on 02.04.1973 and 02.04.1974 whereas the private-respondents who were working as Sub-Inspectors since 1962-1964. It has also come on record that the said private-respondents had been working on the said posts from 1962-1964 as Sub-Inspectors.

6. The Learned Single Judge further kept in mind that Haryana Cooperation Department Group C (Executive) Rules, 1980 (for short, the '1980 Rules') had come into force and thereafter, the amendment had been made in the Punjab State Cooperative Services Class-II Rules, 1958 which were applicable to the State of Haryana which provided further avenue of promotion to Inspectors and Statistical Assistants who had the necessary experience of 7 years to the post of Assistant Registrar. It is also the

up the posts of Statistical Assistants, the writ petitioners were not willing to join the said posts as no promotional avenues was available except for one post of Statistical Officer.

7. It is only by virtue of the amendment made in 1980, the avenue opened up. It is thus apparent that the writ petition was filed in 1996 at that point of time when the appellants realized that there was better scope for promotion for the persons who had opted for the Statistical Assistants and the private-respondents had stolen a march over them while opting for the said post at an earlier point of time to which they had never objected. Thus, the objection of the State that the writ petition was filed after more than 16 years, at a belated stage, is well justified, which fact has also been kept in mind by the Learned Single Judge. The Apex Court in **P.S.Sadasivaswamy Vs. State of Tamil Nadu 1976(1) SLR 53** considered the question of limitation in service matters and held that entertaining such petitions which are patently stale impede the working of the Courts. It was held as under:-

“2.Not only respondent 2 but also respondents 3 and 4 who were the appellant's juniors became Divisional Engineers in 1957 apparently on the ground that their merits deserved their promotion over the head of the appellant. He did not question it. Nor did he question the promotion of his juniors as Superintending Engineers over his head. He could have come to the Court on every one of these three occasions. A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not

approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put for-ward stale claims and try to unsettle settled matters- The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the Court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High court was right in dismissing the appellant's petition as well as the appeal.

3. This appeal is dismissed with costs.”

8. In **P. Chitharanja Menon & others Vs. A. Balakrishnan and others 1977 (2) SLR 289**, a three Judges Bench of the Hon'ble Apex Court held that once the legality of the promotion made in 1962 had not been challenged then the validity of the Government order in 1969 could not be challenged by filing a writ petition in the year 1972. The present case is also somewhat similar.

9. The Apex Court in **Shiba Shankar Mohapatra Vs. State of Orissa 2011 (1) RSJ 624** has held that in seniority matters, delay should not be beyond a period of 3 years and the reasons for not approaching the Court should be explained. The relevant observation reads as under:

“29. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”

10. The second round of litigation had been ensued in the year 2006 when promotions were made of the private-respondents to the post of

Judge by noting that when the first challenge has been repelled then the consequent challenge has also to be rejected, to which principle, we can only give our concurrence in view of the strict principles of delay and laches which apply in service law regarding the issue of promotions.

11. The stand of the private respondents was that there were no rules regulating promotion to the post of Statistical Assistant and they were promoted in the year 1980 before the 1980 Rules came into force. Specific plea was taken that the duties of Inspectors and Statistical Assistant were complimentary and there was no promotional avenues available and it was provided for the first time, as noticed above on 09.08.1995 (Annexure P-3). It had specifically been submitted that the writ petitioners never preferred to become Statistical Assistants and that both the cadres of Inspectors and Sub-Inspectors were different.

12. Keeping in view the above discussion, we are of the considered opinion that the judgment of the Learned Single Judge does not suffer from any infirmity especially keeping in view the fact that the issue was sought to be raked up at a belated stage as recorded above. Resultantly, finding no ground to interfere in the well reasoned judgment of the Learned Single Judge, the present appeals are hereby dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

20.03.2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No